Outline Study of Law. By ISAAC FRANKLIN RUSSELL, D.C.L., LL.D., Professor in the University of the City of New York. New York, Strouse & Co., 1894. — 8vo, 280 pp.

A writer who takes all law for his province and who attempts to present its leading principles in the compass of one thin volume deserves lenient judgment. Rules laid down without qualification and definitions given without explanation are easily attacked; but with a book of this sort the attack should be confined to statements that are either clearly wrong or almost inevitably misleading. Into the one or the other of these classes, unfortunately, fall many of the author's dicta concerning legal history and foreign law. When, for example, he declares that the *fideicommissa* of the Roman law were "grants" originally made for the purpose of evading the strict rules of descent (pp. 84, 94); when he says that, by adoption, a Roman son might transfer his "domestic allegiance . . . to a *paterfamilias* of his own selection" (p. 92); when he affirms that the Roman law demanded a consideration for a promise, and identifies the gratuitous promise with the *nudum pactum* (p. 170); and when he assigns to the "improper" feudal tenures, "where the return made by the tenant was a money rent or agricultural labor," a later date than that of the tenures by military service, — he is clearly wrong. When he treats *usus* as "possession under the statute of limitations" (p. 98); when he distinguishes the *tutor* as "guardian of the person" from the *curator* as "guardian of the property" (p. 123); and when he says that "*emphyteusis* may have been a clear case of feudal grant" (p. 213), — his statements are likely to produce grave misconceptions. His declarations that "the public law of nations is not older than the *De Jure Belli ac Pacis* of Hugo Grotius" (p. 15), and that "the most famous of modern codes are the Code Napoléon . . . and the Code of Louisiana" (p. 13) are hard to account for, unless the first be taken as a bit of rhetoric and the second as a piece of American chauvinism. The assertion that "heathen nations are strangers" to the code of international law (p. 16) is probably an historical reminiscence; but the statement that "in Germany much of the public administration which we entrust to the judiciary is assigned to the army" (p. 42) is one for which it seems impossible to account.

His presentation of existing Anglo-American rules is often misleading, either because his statements are too general or because his language is inexact. Speaking of conflicts of law, he declares, without qualification, that legal capacity is determined by domicile and that personal property has no *situs* (p. 21). If but a single phrase

could be devoted to each class of questions, it would be more exact to say that legal capacity is determined by the *lex loci actus*, and that personal property, except where it is regarded as an entirety or estate, is governed by the *lex situs*. His statement that "a contract not to sue is void" (p. 166), and his remark, three pages further on, that the defendant may legally "buy his peace" from an impending law-suit, may well seem, to a beginner, flatly contradictory. It should have been made clear that the first rule applies only to a future cause of action. His statement, in the chapter on divorce, that in New York there is "a statutory presumption of death resulting from absence, *unexplained*, for five years" (p. 110), might lead the lay reader to imagine that desertion without reason stated would break the bond of marriage. The assertion that both descent and distribution, in case of intestacy, are governed by consanguinity (p. 144) leaves it unclear why the widow should have any right of of succession. The definition of an implied contract as "one dictated by reason and justice" is scarcely as definite as might be desired.

The author's attempts to account for past and present rules of law — to define the public policy on which they were or are based, are not always happy. It seems unfair to married women and foreigners to rest the legal disabilities of coverture and alienage, as he does on p. 125, on "defect of mind." *De lege ferenda*, a somewhat surprising suggestion occurs on page 267, *viz.*, that Anglo-American law ought to recognize the crime of rape "in cases where the female is the aggressor." The hypothesis seems irreconcilable with the previously unchallenged dictum of Justice Fielding, in the case of Joseph Andrews. In one instance, however, Dr. Russell has really reached the root of the matter, and sets forth a great truth with much simplicity, when he explains, on page 104, that "apart from sentiment, the legal function of matrimony is to fasten upon the head of some one man the burden of the support and education of the young."

Dr. Russell's general view of law is that of the English positivists, modified by an acceptance of the historical idea as set forth by Maine. Methodology does not interest him. "For useful purposes," he says, "the alphabetical method of classification admits of little improvement" (p. 11). For his own purposes, he follows, in the main, the arrangement of the Gaian Institutes and the Code Napoléon.

The reviewer of this work has endeavored to avoid captious criticism, and to give full weight to the defense of lack of space and

consequent necessity of compression. It must be said, however, that the writer has practically estopped himself from using this plea by his frequent excursions into non-legal fields. In such a compendium it is somewhat surprising to find him straying, and often for some distance, into such matters as the services of Thomas Paine to the cause of American independence, the military history of our Revolutionary war, the economic effects of slavery, and the theory and practice of the gerrymander. His observations upon these subjects are always interesting and usually true; but one closes the book with an involuntary recollection of Dr. Johnson's description of a Scotch dinner — "fine miscellaneous feeding."

MUNROE SMITH.

Chapters on the Principles of International Law. By JOHN WESTLAKE, Q.C., LL.D., Whewell Professor of International Law in the University of Cambridge. New York, Macmillan & Co. — 8vo, 275 pp.

This book, as the author says, "is not a detailed treatise on international law, but an attempt to stimulate and assist reflection on its principles." Like Sir Henry Maine's collection of essays on the same subject, it may be considered as a special product of the Whewell professorship; and it is to be estimated as a collection of essays rather than as an attempt at a systematic work.

The first five chapters are devoted to a cursory examination of the nature of international law, and to a sketch of the historical growth of the subject. Something is said of the writings of Ayala, Gentilis, Grotius, Bynkershoek, Wolff and Vattel; and a chapter is devoted to the effect of the Peace of Westphalia, and to the position and influence of Pufendorf among publicists. In this part of the book no feature is presented that seems to require special comment or criticism. It relates to matters often discussed by other writers, and was intended and composed, as the author intimates, "in part performance of a professor's duty to his university."

From the ninth chapter on, various interesting questions of international law are discussed in a clear and forcible manner. The first of these is the question of territorial sovereignty, especially with relation to uncivilized regions — a question, it may be said, of much less importance to the inhabitants of those regions than to the civilized powers whose present and prospective claims may depend upon the effect to be given to discovery or to occupation, or to native treaties and titles. In the award of the Pope in 1884, in the